not be justified. I may assure the House that the requirements of the people of this State are primarily considered as most important and anything that is not required by th people here, alone is being given to outside parties.

Demands put and carried

74. Rs. 150 under "17A Law and Justice—Temporary Establishment"

Mr. M. Sivarama Menon *(Advocate-General):* I move for an additional allotment of Rs. 150 under "17—A—Law and Justice—Temporary Establishment" This amount is required to meet the salary of a temporary clerk appointed for the Government Pleader's Office, Ernakulam, to cope with the extra work owing to the pendency of a large number of execution petitions. This amount is to meet his salary.

Mr. A. V. Moothedan *(Chalakkudi):* I wish to point out that the work of the Government Pleader at Anjikaimal is increasing, because the Government have taken up the administration of several estates. Therefore, all the execution petitions pending in the Munsiff's Courts are transferred to the Anjikaimal District Court.

Mr. M. Sivarama Menon *(Advocate-General):* They are mostly execution petitions under pauper decrees. The Government Pleader has not begun to attend to the work of the estates. This temporary clerk happened to be appointed to cope with the additional work on account of the pendency of execution petitions in pauper decrees.

Demand put and carried

75. Rs. 60—under "17—A—Law and Justice—Office expenses"

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I beg to move for an additional allotment of Rs. 60 under "17—A—Law and Justice—Office Expenses." This amount is required to carry out essential repairs to the typewriter that is being used in the Government Pleader's Office.

Demand put and carried

Legislative Business—Government Bills

The Cochin Cattle Trespass Act (Amendment) Bill—*(cont.)*

Mr. Deputy President: The discussion on the third reading of the Cochin Cattle Trespass Act (Amendment) Bill may be continued.

Mr. A. Madhava Prabhu *(Diwan Peishkar):* We were discussing the question whether it is necessary to delete the Magistrate's functions from the chapter "Complaints of Illegal Seizure and Detention" and give it to the Tahsildars. A point was raised whether that was absolutely essential and all that. Of course, Government do not think it is absolutely essential to change. There is no harm in continuing it. Therefore that amendment, "clauses 10 to 12 of the bill, may be deleted" has been tabled. I am also going to move an amendment to clause 4. In clause 4 substitute the following for the existing clause:

"In section 6 of the Act for the words 'District Magistrate' in the two places where they occur the words 'Diwan Peishkar,' and for the words 'such Magistrate' the words 'Diwan Peishkar' shall be substituted."

That is only a verbal amendment. I am now upon clause 4.

Mr. A. V. Moothedan *(Chalakkudi):* I am glad that the Government have accepted their mistake.

Mr. A. Madhava Prabhu *(Diwan Peishkar):* It is not a question of accepting the amendment.

We do not think it necessary. I said we were at that stage. Now we are on clause 4.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Mr. A. Madhava Prabhu *(Diwan Peishkar)* That is only rectifying a printing mistake.

Mr. M. Sivarama Menon *(Advocate-General):* It is only to correct a printer's mistake.

Amendment put and carried

Mr. A. Madhava Prabhu *(Diwan Peishkar):* The second amendment is to delete clauses 10 to 12. There is no objection to retain what it was there. We do not want to have any change at all.

Mr. M. Sivarama Menon *(Advocate-General):* I second the amendment and in doing so I wish only to bring to the notice of the House one fact. The Hon'ble Member for Chalakkudi was saying that he is thankful to the Government for the Government realising its mistake. I cannot question that statement, because you find that the Government adopted that attitude simply because there was no unanimity of opinion among the non-official members last time. The Hon'ble Member for Kunnamkulam said that the amendment as it stood was more acceptable. When he made a point of that the Hon'ble Member for Cranganur said that that was

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only the view of the Hon'ble Member for Kunnamkulam. Therefore, the Government had no date to chose between those versions and there appeared to be a larger view for the proposition that the present form should not be disturbed. Therefore, we thought it wise to retain the sections in the present form and leave it to the non-officials to bring forward any amendment. Therefore, Government do not commit themselves to the opinion that the Magistrates are the most competent persons to decide cases arisiag out of illegal seizure. As a matter of fact, we might have thought that there were several other forms of tribunals who may be more competent to try such cases. We have left it to the non-official side to table amendments, if any as they chose if any particular member thought that the present practice should be discontinued.

Mr. A. V. Moothedan *(Chalakkudi)*: With regard to the explanation given by the Hon'ble Law Member I wish to say one or two words. Sir, the Government published a bill for amending the Cattle Trespass Act. There the object of the bill appears to be that there are two functions under the enactment—administrative function and magisterial function. It is clearly stated in the statement of objects and reasons that this duel function will lead to difficulties and therefore that should cease. That is, the administrative function will remain fully in the Revenue Department and the megisterial function in the Magistrates. It is clearly stated in the statement of objects and reasons. When we come to the text of the bill, namely, clauses 10 to 12, they are taking away the magisterial functions from the Magistrates and confer them on the Tahsildars. Nobody gave that authority and it is against the statement of objects and reasons. Suppose we never went through the bill. We would have committed a great mistake. I shall read it again: "The Cattle Trespass Act, III of 1071, was passed at a time when the revenue and magisterial functions were vested in the same officers. When these functions were bifurcated the administration of the Act was vested in the Revenue Department but the Act was not amended. Under the Act the administration and control of cattle pounds vest in the District Magistrate while in actual practice it is under the Diwan Peishkar. The dual control is not conducive to the efficient administration of the Act. It is proposed to amend the Act and to vest the entire control in the Diwan Peishkar and Tahsildars instead of the District Magistrate and Magistrates". The object of the bill was to give absolute administration of the pounds to the Revenue Department and leave untouched the remaining portions. The Bill contains 6 chapters. The first chapter is "Preliminary". Chapter II is "Pounds and Pound-keeper". That is purely an administrative function. Then comes chapter III, "Impounding Cattle." Then comes "Delivery or sale of cattle." These are all administrative functions. Then come chapters V and VI. Chapter V deals with 'complaints of illegal seizure or detention and Chapter VI "Penalty." Chapters V and VI are clearly magisterial functions. By a reading of the statement of objects and reasons there is no intention to amend these chapters. If an Hon'ble Member had not gone through the bill carefully it woud have been a very great mistake. If we relied entirely upon the Government for this bill then we would have committed a great mistake and the Government think that they are even now right. When the Government moved for suspension of the S. O. for taking up the bill forth with for consideration I opposed. Then my friend, the Hon'ble Member for Vadakkancheri said that the Bill may be referred to small committee consisting of three members. Even that the Government opposed. And now we find a new amendment brought forward. So the Government's action in this Bill is entirely unjustifiable and wrong. Why can't you accept your mistake. I don't say that nobody will commit mistakes. We are bound to make mistakes. The Government also will make mistakes. But they still say that they have not committed any mistake. By a reading of the statement of the objects and reasons and the Bill it will be clear that you have gone beyond that. It was a mistake and it was pointed out to you. But yon won't accept it. Now you accept it. I think the action of the Government cannot be justified. It was a mistake and the Government ought to be grateful to the non-official side for rectifying that mistake.

Mr. C. V. Iyyu *(Kunnamkulam)*: I have to point out that the decision of Tahsildar should not be questioned by a 2nd class Magistrate. A Tahsildar is an officer of higher status and pay then a Second Class Magistrate. I could understand if it is revised by the Diwan Peishkar or even a Munsiff. But since this involves the executive function as well as also some sort of a quasi-criminal case why not leave this to the District Magistrate.

Mr. K. M. Ibrahim *(Cranganur)*: Cannot the Diwan Peishkar come under the jurisdiction of the Magistrate?

Mr. C. V. Iyyu *(Kunnamkulam)*: This sort of a decision of the Tahsildar ought not be questioned by a 2nd class Magistrate.

Mr. A. V. Moothedan *(Chalakkudi)*: Where is the provision?

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Mr. M. Sivarama Menon *(Advocate-General):* Even otherwise, the section as it stands now authorises the District Magistrates or any Magistrate specially authorised by the District Magistrate to try such cases.

Mr. A. B. Salem *(Mattancheri):* By the present amendment has the principle of the Judiciary and the Executive being separate, been kept intact.

Amendment put and carried

Bill as amended put and carried

The Cochin Trade Marks Bill

Mr. M. Sivarama Menon *(Advocate-General):* I move that the Cochin Trade Marks Bill be read in Council.

Mr. B. V. K. Menon *(Secretary to Government):* I second it.

Mr. M. Sivarama Menon *(Advocate-General):* The object of this Bill is only to afford better protection to trade marks in general. Even in British India an Act regulating the registration of trade marks was passed only in the year 1940, even though earlier attempts were made there to have a piece of legislation to ensure greater protection for trade marks. But commercial opinion even in British India had not then crystallised and therefore the Government of India had to keep back that legislation for a pretty long time till at last commercial interests themselves began to plead for legislation and it was at their instance that the Trade Marks Act was passed in 1940. We are also falling into line with the law in British India except in regard to one particular. That is, in the Indian Act there is a provision for a central registering agency for textile marks in Bombay. You know, as a matter of fact, that most of the big textile concerns have their branch offices or head offices in Bombay. Therefore, for the purpose of easy reference of textile trade marks a central office has been constituted in Bombay. But in Cochin there are only two or three textile mills. Therefore, we are having our ordinary registry offices for textile trade marks also with no central office for textile marks alone. In all other respects this Bill is on all fours with the law in British India. Now, as a matter of fact, if I have got a trade mark I must prove in a court of law when I want to establish property in that trade mark the fact that I have acquired property in that trade mark by long use. Another man may prove by oral evidence that he began to make use of an identical mark earlier in date. The court has to act upon oral evidence supported by documents, if any. Therefore, there is a great difficulty when there is dispute to prove who put into the market first the particular trade mark. For instance, suppose a person uses an *Arayannam* or a crow or some such mark is his trade mark. Another trader may without the knowledge of this person have been using some sort of similar mark to his goods and it may have obtained some sort of reputation by user. Conflict often arises between these two competitors. When we bring into force here the provisions of this Bill, objections will be invited by the registrar to the Registration of that trade mark, which will be duly notified. Therefore, every person interested will come in. If it in any way infringes anyone's right he can immediately raise his objections and point out that he has been using that particular mark for a longer time than that man who has made the application. It will be for the Registrar to decide that question after hearing objections. If a registration is actually effected there is provision in the Act for the aggrieved party to appeal to the High Court. Therefore, the position is that by inaugurating a system by which trade marks are registered, by legalising it in the way contemplated in this bill, the trade marks will be afforded better protection and that is necessary for the protection of commercial interests. A person who gets a trade mark registered will have a greater sense of security. And it is highly necessary that as far as possible this law should be on all fours with the law obtaining in British India and other places because of the mutual commercial interests between British India and Cochin. My submission to the House is that this House may allow the passage of this Bill as early as possible because these are times when industries are coming up, when persons may try to invest more money which would bring in more profit not only to the State but to the labourers here. It is better at a time like this when industrialisation is looming large that the Bill is not delayed. With these few observations I commend this Bill for the acceptance of this House.

Mr. A. V. Moothedan *(Chalakkudi):* I welcome the proposal of the Government to introduce this Bill. But at the same time I want to know why certain other Bills which are in British India are not brought here, for example, an amendment to the Criminal Procedure Code enabling a prisoner or a detenu in the jail to move the High Court by a petition of *habeas corpus*.

Mr. M. Sivarama Menon *(Advocate-General):* There is already a Bill.

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